

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION**

THE BIG WHALE, LLC DBA KILLER  
WHALE,

Plaintiff,

v.

CERTAIN UNDERWRITERS AT LLOYDS,  
LONDON and PENINSULA INSURANCE  
BUREAU,

Defendants.

Case No.: 7:21-cv-121

**NOTICE OF REMOVAL**

NOW INTO COURT, comes Defendants, Certain Interested Underwriters at Lloyd's, London Subscribing to Policy No. HLC1400427 ("Underwriters") (incorrectly named in the Complaint as "Certain Underwriters at Lloyds, London") and Peninsula Insurance Bureau ("PIB"), who pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 1441, and 28 U.S.C. § 1446, and with a full reservation of rights, hereby remove the lawsuit styled *The Big Whale, LLC DBA Killer Whale v. Certain Underwriters at Lloyds, London and Peninsula Insurance Bureau*, Case No. 21-CVS-1798, on the docket of the General Court of Justice, Superior Court Division for the County of Onslow, State of North Carolina, to the United States District Court for the Eastern District of North Carolina. Underwriters and PIB respectfully submit the grounds for removal of this action as follows:

1. On May 21, 2021, The Big Whale, LLC DBA Killer Whale (“Plaintiff”) initiated this lawsuit by filing a Complaint in the General Court of Justice, Superior Court Division for the County of Onslow, State of North Carolina (the “State Court Action”).

2. In the State Court Action, Plaintiff alleges that Underwriters breached their contract with Plaintiff by failing to pay benefits owed under Policy No. HLC1400427 (the “Policy”) for damage sustained to Plaintiff’s property at 1310 State Hwy 210, Sneads Ferry, NC 28460 on or about September 14, 2018 due to Hurricane Florence. Plaintiff also attempts to assert additional purported causes of action alleging that Underwriters and PIB breached a covenant of good faith and fair dealing with Plaintiff, engaged in Unfair Trade Practices pursuant to Chapter 75 of the North Carolina General Statutes, and engaged in bad faith denial and handling of Plaintiff’s insurance claim.

3. On June 1, 2021, PIB was served with a summons and a copy of Plaintiff’s Complaint in the State Court Action. (See **Exhibit “A”** attached hereto and incorporated by reference.)

4. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Underwriters and PIB in the State Court Action are attached hereto as **Exhibit “A”**.

#### **Citizenship of the Parties**

5. Upon information and belief, The Big Whale LLC d/b/a Killer Whale is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business in Onslow County, North Carolina.

6. Underwriters are comprised of five syndicates whose subscribers are organized and existing under the laws of the United Kingdom, outside of the State of North Carolina, and which are otherwise not citizens of the State of North Carolina, but of a foreign country. The

five syndicates subscribing to the Policy are located in and have their principal places of business in London, England.

7. PIB is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in the State of Florida.

#### **Amount in Controversy**

8. There is more than \$75,000.00, exclusive of interest and costs, in controversy in this lawsuit.

9. The Complaint alleges that, because of Underwriters' alleged breach of contract, Plaintiff "has been forced to bear the costs of the damage caused by Hurricane Florence in excess of \$800,000.00." (Ex. A, Compl. ¶ 30.)

10. Accordingly, from the face of the Complaint, the amount at stake in this litigation exceeds \$75,000.00, and the amount in controversy has been satisfied for purposes of removal.

#### **Timeliness of Removal**

11. Thirty (30) days have not elapsed from the date of service of the Complaint. Furthermore, one year has not passed from the commencement of this action, which occurred on May 21, 2021. Accordingly, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).

#### **Conclusion**

12. 28 U.S.C. § 1441(a) provides:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

13. Given that there is diversity of citizenship between the Plaintiff and each defendant, and because the amount in controversy exceeds \$75,000.00, exclusive of interest,

attorneys' fees, and costs, this Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1332. Accordingly, this action may be removed to this Court pursuant to 28 U.S.C. § 1441.

14. Venue is proper under 28 U.S.C. § 1446(a) because the State Court Action is pending within the Southern Division of the United States District Court for the Eastern District of North Carolina.

15. Promptly after filing this Notice of Removal, written notice hereof will be given to all parties. In addition, Defendants will file a copy of this Notice of Removal with the Clerk of Court for the General Court of Justice Superior Court Division for the County of Onslow, State of North Carolina in conformity with 28 U.S.C. § 1446(d).

WHEREFORE, Defendants Underwriters and PIB pray that this Notice of Removal be deemed good and sufficient, that the aforesaid Complaint be removed from the General Court of Justice, Superior Court Division for the County of Onslow, State of North Carolina to the United States District Court for the Eastern District of North Carolina for trial and determination as provided by law, and that this Court enter such orders and issue such process as may be proper to bring before it copies of all records and proceedings in such civil action from such state court and thereupon proceed with the civil action as if it had been commenced originally herein.

This the 1st day of July 2021.

[Signature appears on following page]

Respectfully submitted,

PHELPS DUNBAR LLP

/s/ Kevin M. O'Brien

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**Certificate of Service**

The undersigned certifies that the document to which this Certificate is affixed was served upon the following parties by UPS Overnight Delivery on July 1, 2021.

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